

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

PATRICK ROMANO, *et al.*,

Plaintiffs,

v.

TORCH ELECTRONICS, LLC, *et al.*,

Defendants.

)
)
)
)
)
)
)
)
)
)

No. 2:23-CV-04043-WJE

**DEFENDANT MOHAMMED ALMUTTAN'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFFS' CLASS ACTION COMPLAINT**

Defendant Mohammed Almuttan ("Defendant"), by and through undersigned counsel, respectfully files, pursuant to Federal Rules of Civil Procedure 7 and 8, this Answer to Plaintiffs' Class Action Complaint. (Doc. 1). Section headings are included for reference purposes only.

CLASS ACTION COMPLAINT

1. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

Parties, Jurisdiction, and Venue

2. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

3. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

4. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

5. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

6. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

7. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

8. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

9. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

10. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

11. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

12. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

13. Defendant admits the allegations contained in this paragraph.

14. Defendant admits the allegations contained in this paragraph.

15. Defendant admits the allegations contained in this paragraph.

16. Defendant admits the allegations contained in this paragraph.

17. Defendant admits the allegations contained in this paragraph. However, this paragraph references a document in writing which, if authenticated, is the best evidence; to the extent the allegations are inconsistent or contrary to such writing, Defendant denies the same.

18. Defendant denies the allegations contained in this paragraph.

19. Defendant admits the allegations contained in this paragraph. However, this paragraph references a document in writing which, if authenticated, is the best evidence; to the extent the allegations are inconsistent or contrary to such writing, Defendant denies the same.

20. Defendant admits the allegations contained in this paragraph.

21. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

22. The allegations contained in this paragraph and each of its subparts constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

23. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

Facts Applicable to All Counts

24. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

25. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

26. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

27. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

28. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same. Additionally, the allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph. Finally, this paragraph references documents in writing which, if authenticated, are the best evidence; to the extent the allegations are inconsistent or contrary to such writings, Defendant denies the same.

29. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same. Additionally, the allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph. Finally, this paragraph references documents in writing which, if authenticated, are the best evidence; to the extent the allegations are inconsistent or contrary to such writings, Defendant denies the same.

30. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same. Additionally, the allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph. Finally, this paragraph references documents in writing which, if authenticated, are the best evidence; to the extent the allegations are inconsistent or contrary to such writings, Defendant denies the same.

31. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

32. Defendant denies the allegations contained in this paragraph.

33. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

34. Defendant admits the allegations contained in this paragraph. However, this paragraph references a document in writing which, if authenticated, is the best evidence; to the extent the allegations are inconsistent or contrary to such writing, Defendant denies the same.

35. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same. Additionally, this paragraph references a document in writing which, if authenticated, is the best evidence; to the extent the allegations are inconsistent or contrary to such writing, Defendant denies the same.

36. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

37. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

38. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

39. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

40. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

41. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

42. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

43. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

44. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

45. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

46. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

47. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

48. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

49. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

50. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

51. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

52. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

53. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

54. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

55. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

56. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

57. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

58. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

59. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

60. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

61. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

62. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

63. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

64. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

65. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same. Additionally, the allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

66. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

67. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same. Additionally, the allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

68. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

69. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

70. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

71. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

72. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

73. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

74. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and each of its subparts and therefore denies the same.

75. Defendant denies all allegations directed at him contained in this paragraph and each of its subparts. Defendant lacks sufficient knowledge to admit or deny all remaining allegations contained in this paragraph and each of its subparts and therefore denies the same.

Plaintiffs' Individual Allegations

76. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and each of its subparts and therefore denies the same.

77. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and each of its subparts and therefore denies the same.

78. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and each of its subparts and therefore denies the same.

79. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and each of its subparts and therefore denies the same.

80. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and each of its subparts and therefore denies the same.

81. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

82. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and each of its subparts and therefore denies the same.

83. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and each of its subparts and therefore denies the same.

84. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

85. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and each of its subparts and therefore denies the same.

Plaintiffs' Class-Wide Allegations

86. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

87. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same. Additionally, the allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

88. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and each of its subparts and therefore denies the same. Additionally, the allegations contained in this paragraph and each of its subparts constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

89. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same. Additionally, the allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

90. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same. Additionally, the allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

91. Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same. Additionally, the allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

92. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

COUNT I – CIVIL RICO

93 - 129. On August 21, 2023, this Court dismissed Count I of Plaintiffs' Class Action Complaint (Doc. 76) and denied Plaintiffs' Motion for Reconsideration (Doc. 76) as to Count I (Doc. 81). Therefore, Defendant need not respond to the allegations in Count I. To the extent any allegations contained within any paragraph of Count I—all of which constitute legal conclusions which do not require a response—are relevant to Counts II or III, Defendant denies all such allegations.

COUNT II: VIOLATIONS OF THE MISSOURI MERCHANDISING PRACTICES ACT ("MMPA") (All Defendants)

130. Defendant restates his answers to the allegations above which are incorporated as if fully set forth herein.

131. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

132. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

133. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

134. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

135. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

136. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

137. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

138. The allegations contained in this paragraph and each of its subparts constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted,

Defendant denies the allegations contained in this paragraph and each of its subparts. Additionally, Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and each of its subparts and therefore denies the same.

139. The allegations contained in this paragraph and each of its subparts constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph and each of its subparts. Additionally, Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and each of its subparts and therefore denies the same.

140. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph. Additionally, Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

141. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph. Additionally, Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

142. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph. Additionally, Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

143. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph. Additionally, Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

144. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph. Additionally, Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

WHEREFORE, Defendant respectfully requests that Count II be dismissed with prejudice, that Defendant be awarded his attorneys' fees and costs incurred herein, and for such other and further relief as this Court deems just and proper under the circumstances.

COUNT III: MONEY LOST UNDER § 434.030, RSMO.

145. Defendant restates his answers to the allegations above which are incorporated as if fully set forth herein. The remaining allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph.

146. The allegations contained in this paragraph constitute legal conclusions and therefore do not require a response; however, to the extent a response is warranted, Defendant denies the allegations contained in this paragraph. Additionally, Defendant lacks sufficient knowledge to admit or deny the allegations contained in this paragraph and therefore denies the same.

WHEREFORE, Defendant respectfully requests that Count III be dismissed with prejudice, that Defendant be awarded his attorneys' fees and costs incurred herein, and for such other and further relief as this Court deems just and proper under the circumstances.

DEFENDANT'S AFFIRMATIVE DEFENSES

Defendant asserts the following statements and affirmative defenses to Plaintiffs' Class Action Complaint:

1. All allegations of fact and legal conclusions in the Class Action Complaint not specifically admitted are hereby denied.
2. Plaintiffs' claims against Defendant are barred because Defendant has qualified immunity against any claims relating to devices owned by Torch Electronics, LLC.
3. Plaintiffs' claims against Defendant are barred under the doctrine of public authority.
4. Plaintiffs cannot recover as they fail to state a claim upon which relief can be granted.
5. Plaintiffs' claims are barred because Defendant's actions were at all times justified and proper under applicable law.
6. Plaintiffs' claims for relief are barred by laches.
7. Plaintiffs' claims for relief are barred by the doctrine of estoppel.
8. Plaintiffs cannot recover as the relevant statutes of limitations expired prior to Plaintiffs' initiation of this lawsuit.
9. Plaintiffs cannot recover as their causes of action are barred by the doctrine of unclean hands.

10. Plaintiffs cannot recover because whatever alleged injuries or damage Plaintiffs may have sustained, if any, were caused or contributed to by the fault of other persons and parties over whom Defendant has no control and for whom Defendant cannot be held legally responsible.

11. Plaintiffs cannot recover because any damages allegedly sustained by Plaintiffs, if any, were the result of Plaintiffs' own comparative fault, negligence, actions and/or inactions.

12. Plaintiffs cannot recover as they have failed to mitigate their damages.

13. At all relevant times, Defendant acted in good faith and with the belief that he was conducting himself in a manner that did not violate any duties or established principles of law.

14. Plaintiffs' claims are barred due to Plaintiffs' fraud.

15. Plaintiffs' claims are barred by release.

16. Plaintiffs' claims are barred by *res judicata*.

17. Plaintiffs' claims are barred by Plaintiffs' waiver.

18. Plaintiffs' claims are barred by the voluntary payment doctrine.

19. To the extent the acts or omissions of third persons caused or contributed to cause Plaintiffs' alleged damages, if any, Defendant is not liable or is entitled to an allocation of fault with those third persons.

20. Plaintiffs fail to state a claim upon which relief may be granted because no actions of Defendant were the proximate cause of any alleged injury to Plaintiffs.

21. Plaintiffs' claims are barred by the doctrine of *in pari delicto*.

22. Any award of statutory penalties would violate Defendant's Due Process rights.

23. Defendant incorporates by reference each and every other affirmative defense that may be uncovered or made known during the investigation and discovery of this case.

24. Defendant hereby gives notice that he intends to rely upon such other additional defenses as may become available or appear subsequently in this case, including during the course of discovery proceedings, and hereby reserves the right to amend this Answer to assert any such defenses.

WHEREFORE, Defendant respectfully requests that this Court:

1. Enter judgment in favor of Defendant and against Plaintiffs;
2. Dismiss Plaintiffs' Class Action Complaint and each cause of action with prejudice;
3. Award Defendant his attorneys' fees and all costs incurred;
4. Grant a jury trial on all issues so triable; and
5. Grant such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

Margulis Gelfand, LLC

/s/ Justin K. Gelfand
JUSTIN K. GELFAND
IAN T. MURPHY
STONE T. HENDRICKSON
7700 Bonhomme Ave., Ste. 750
St. Louis, MO 63105
Telephone: (314) 390-0234
Facsimile: (314) 485-2264
justin@margulisgelfand.com
ian@margulisgelfand.com
stone@margulisgelfand.com
Counsel for Mohammed Almuttan

Certificate of Service

I hereby certify that I filed the foregoing through the Court's CM/ECF system which will provide notice of filing to all counsel of record.

/s/ Justin K. Gelfand
JUSTIN K. GELFAND
IAN T. MURPHY
STONE T. HENDRICKSON
7700 Bonhomme Ave., Ste. 750
St. Louis, MO 63105
Telephone: (314) 390-0234
Facsimile: (314) 485-2264
justin@margulisgelfand.com
ian@margulisgelfand.com
stone@margulisgelfand.com
Counsel for Mohammed Almuttan